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In The

# *Supreme Court of the United States*

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October Term 1995

RICHARD AND LINDA SIMONE,

Petitioners,

Vs.

WORCESTER COUNTY INSTITUTION FOR SAVINGS,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

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# PETITIONERS' SUPPLEMENTAL BRIEF

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By PETITIONERS

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## OPINIONS BELOW, CONTITUTIONAL PROVISIONS AND STATUES INVOLVED

On June 4, 1992, the U.S. Bankruptcy Court for the District of Massachusetts (Queenan J) dismissed Pettitioners Complaint., Petitioners appealed.

On December 21, 1993, U.S. District Court (Gorton,N) affirmed the judgement of the U.S.Bankruptcy Court(Pet.App.A).

On June 23, 1994, U.S. District Court denied Petitioners Motion for Newly Discovered Evidence & Ordered both parties to submit copies of the Trial Transcript of the June 4, 1992 Trial(Pet.App.B)

On August 12, 1994 U.S. District Court(Gorton,N) affirmed the judgment of the U.S.Bankruptcy Court(Pet.App.C). Pettitioners appealed.

On Decemer 30, 1994 U.S. Court of appeals for the First Circuit denied Oral Argument(Pet.App.F).

On April 20, 1995 U.S. Court of Appeals for the First Circuit affirmed the Bankruptcy Court's dismissal of Petitioners' case. Petitioners request for rehearing was denied.

Petitioners rely on U.S. Bankruptcy Rule 9024 (60)b Mistake, Inadvertance, or Fraud at trial,of which Petitioners claim their Rights to a Fair Trial were Violated, Thus their Rights to Due Process were Violated., & Fed.R. 615 Petitioner Linda Simone's Rights during Sequestration were violated. & Massachusetts Consumer Protection Act(MASS.G.L.ch. 93A.), in that Respondent misrepresented Petitioners property on November 16, 1990& again on June 13, 1991 & used deceptive acts & practices after the sale.

## STATEMENT OF THE CASE

Petitioners submit this Supplemental brief in response to Respondents Brief in Opposition. Petitioners Reply Brief, to Respondents Brief in opposition, would have exceeded 10 pages.

## STATEMENT OF FACTS

Petitioners rely on the three (3) Orders of the U.S. District Court dated December 21, 1993, June 23, 1994, & August 12, 1994.

Petitioners also rely on the opinions of the U.S.Court of Appeals which denied Oral argument(Pet.App F), & its denial of Petitioners appeal(Pet App G), & its denial of Petitioners request for an investigation of "Missing Evidence Notebook & Missing Exhibits" which was used at trial.(Pet App. 4A attached to Petitioners "Reply Brief to brief in opposition).

Pursuant to Supreme Court Rule 15.7, Petitioners also provides the following corrections of perceived misstatements & ommissions of fact in "Respondents Statement of Facts & Respondents reasons for denying petition". (Respondents Brief in Opposition, "B. Statement of facts 1. & reasons for denying petition II).

1. Respondent misstated by stating only that: "Petitioners misstate that there was evidence not before the trial judge during trial".

2. Respondent misstated by stating: "Petitioners claims are incomprhensible in the if evidence was not before the trial judge, it could not have been admitted as evidence.

3. Respondents' misinterpretation of Petitioners question to this court regarding Oral Argument.

## REASONS FOR GRANTING THE WRIT

I.

Petitioner's Questions in Writ of Certiorari was; "If evidence which was presented at deposition by the Respondent is deleted at trial?"

"Respondent presented a three(3) page code report at deposition, the first page contained the date June 20, 1991. The Code report was issued on May 17, 1991, the single family sale occured on June 13, 1991. Respondent became aware of the code report "seven days after the sale".(Pet App. Q page 91), (Pet App. O three page report).

At trial Respondent presented a 2 page code report. Dated June 2, 1992, 2 days before trial.(Pet App.P two page code report).

The signifigance of the page containing the June 20, 1991 date, which was not submitted into evidence by either counsellor, is seen in the Attorney's letters; "Respondent's counsel stated: "Given the code report, the property was properly advertised & sold as a single family".(Pet. App. Attached to Pet. Reply to Respondents Brief in opposition, 1A, 1b, 1C, 2a, 2b, 2C, 2D).

The Attorney's letters also show, that after advising Respondent that the property had been advertised as a single family during November 1990(6 months prior to the code report being issued), Respondent shifted the blame in that an appraisal "treated the property as a single family".

However,at deposition Respondent,( as shown in Petitioners petition & Petitioners Reply Brief), admitted that "All meetings & discussions with the appraiser & others at the bank, suggesting to treat the property as a single-family, "were all after the sale"..,

Further, the trial Exhibit sheet reveals

that Petitioners counsel "did not present into evidence the 3 page code report he had taken at deposition".(Pet.App M).

Further, the U.S.Bankruptcy clerk "Mary Jane Leary", documented the evidence notebook for Petitioners after trial, & could not document the 3 page code report because it was not in the evidence notebook.(Pet.App H, facts 1 thru 6).

The Trial exhibit sheet, the 2 page code report at trial, the 3 page code report taken at deposition support Petitioners argument., & per Bankruptcy Rule 9024 60b the trial judge's decision should have been Void.

Petitioners argue here that: All the above was part of the record. Additionally, in response to Respondents Brief in opposition Petitioners "did not misstate".

The record indicates that evidence was not before the trial judge during trial,"but shold have been" in order for Petitioners to have recieved a Fair Trial. The record shows that Petitioners Rights were violated.,thus, their rights to due process were violated.

REASONS FOR GRANTING THE WRIT, II.

Petitioner's "Questions Presented" in Writ of Certiorari stated: "If other evidence during trial is being "portrayed" to exist in the evidence notebook which the trial judge reads from, but does "not exist" in the note book., is the trial judge's decision void per Bankruptcy Rule 9024 60b & as a result were Petitioners Rights to a Fair Trial violated.

The Transcript reveals: Petitioners counsel presents a bundle of papers at trial., "No Exhibit # is mentioned or indicated".

"The trial judge even asks, Have these been included in the book?

Petitioners Counsel responded, "Yes".
The trial judge asks, "where are we in the book then?
Petitioners counsel then: Guides the trial judge into the respondents side of the note-book, He says, Your Honor, they're the same as defendants' 1 & 2, & they may be easier to use in that form(Pet App H facts 1-6).

The trial Exhibit sheet reveals "no check marks on petitioners side(Pet App.M).
The Bankruptcy clerk documented the notebook for petitioners, she could only document a portion of the November 90 appraisal which contained "No Exhibit Stamp".

"The Trial Judge" in the transcript tells any reasonable person that; The evidence is not in the notebook.

Petitioners counsel, in the transcript shows any reasonable person that; He attempts to "Portray" that evidence is in the notebook, but in fact the record shows it is not".

"In response to Respondents Brief in opposition, Petitioners Argue, the claims are not incomprehensible".

## REASONS FOR GRANTING THE WRIT III.

Petitioner's questions presented in Writ of Certiorari shown in Question #5 in part was, "If oral argument had been granted".

"Respondent misinterpreted petitioners question to this Court.

Petitioner's question was designed to show this Honorable Court that, If Oral argument had been granted(Petitioners were never given the opportunity), Petitioners believed as shown in the facts in this brief & Reply brief & Petition that; the issues that were presented could have & should have been resolved prior to the U.S. District Court Order in 1993(Pet App A, which has been shown to be in error). Or, could have & should have been resolved in the U.S. Court of Appeals

(Pet App H pages 9, 10 15 & 16).,& (briefs & reply briefs on appeal to U.S. District court & motions & briefs on appeal to U.S. Court of appeals pages 27 & 31).

Petitioners argue here to this Honoable Court that: "If Oral Argument had been granted petitioners would have shown that the opinion of the U.S. Court of appeals was clearly erroneous & in error in that: "Plaintiffs auctioneer witnesss "Only Testified" that if the property were advertised as a two family, it would have attracted a "different audience".(Pet App G page 9 1st parag)

PETITIONERS ARGUE HERE THAT: It would have been shown that he was petitioners witness & that Petitioners were very familiar with his testimony., & that He "Also Testified" that he appraised petitioners property as a "two-family" on two occasions, 1988 & 1991., & He also testified that two-families are" worth more than single families"., & petitioners would have made the argument that the property would have produced a "higher price". (Pet App N page 113 line 6 thru 22, & page 118 line 11 thru line 14).

Additionally, if Oral argument had been granted Petitioners would have pointed out to the U.S. Court of Appeals that its opinion was clearly erroneous & in error in that:

"U.S.Court of appeals stated that Petitioners brief was vague & myraid & completely unsupported by the record(Pet App G page 3 footnote).,it further stated that "The burden is on appellants to prove that the bankruptcy court's findings are clearly erroneous"(Pet App G, pg.4 last paragraph).

"Petitioners would have argued there & Now argue to this Honorable Court that":

By the U.S. Court of Appeals blanketing Petitioners supporting facts & evidence, its error by doing so was clearly in error & clearly erroneous in that:

Petitioners also showed the U.S. Court of appeals & U.S. District Court on appeal that;

"It was stipulated at trial that the Respondent after selling the property to themselves as a "Single Family", Respoodent insured the property as a "Two-Family" the day After the Sale."(Pet. Briefs & Reply Briefs on appeal to U.S. District Court & on Page 33 of Brief on appeal to U.S. Court of Appeals, all of which pointed out the areas of the trial transcript).(Petitioners briefs were volumous & not attached).

## CONCLUSION

For all the foregoing reasons shown in this brief, & Petitioners Reply to Respondents Brief in Opposition & Petitioners Petition, the Writ for Certiorari should be Granted.

Dated February 23, 1996

RESPECTFULLY SUBMITTED

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